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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,096	04/26/2007	Sungsuk Steve Kim	0005178.2019	5480

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EXAMINER	
SMALLEY, JAMES N	
ART UNIT	PAPER NUMBER
3781	
MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/589,096	KIM ET AL.	
	Examiner	Art Unit	
	JAMES N. SMALLEY	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 March 2009* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Li US 4,700,860.

Li '860 teaches a closure comprising a snap bead (19), and a resilient liner (14).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hidding et al. US 5,957,316 in view of Li US 4,700,860.

Hidding '316 teaches a closure having a top, a skirt, and a resilient bead.

The reference, as applied, fails to teach the seal extending to the resilient bead.

Li '860 teaches a snap-on closure, and further teaches forming a seal in-situ such that it extends to the resilient bead.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Hidding '316, extending the seal such that it reaches the resilient bead, as taught by Li '860, motivated by the benefit of increased sealing about the container neck.

5. Claim 2-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hidding et al. US 5,957,316 in view of Li US 4,700,860 as applied above under 35 U.S.C. 103(a) to claim 1, and further in view of Adams et al. US 5,687,865.

Regarding claim 2, Hidding '316, as applied, teaches all limitations substantially as claimed, but fails to teach the seal being elastomeric.

Adams '865 teaches it is known to form a seal for water cooler bottle cap of a plastic foam, which is an elastomeric material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seal of Hidding '316, forming it of an elastomeric material as taught by Adams '865, motivated by the benefit of a synthetic food-grade seal. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 3, the limitation comprises a method recitation within the scope of an apparatus claim. It has been held that method limitations in a product claim do not serve to patentably distinguish the claimed product from the prior art. See *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). Thus, even though a product-by-process claim is limited and defined by a process, determination of patentability is based on the product itself. Accordingly, if the product in a product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. *Thorpe*, 777 F.2d at 697, 227 USPQ at 966; *In re Marosi*, 710 F2.d 799, 218 USPQ 289 (Fed. Cir. 1983).

Regarding claim 6, the radial inner edge of the seal is arcuate in the horizontal plane, as it is annular.

Regarding claims 7-8, the independent claim is drawn to the closure, for use with a container. The closure of Hidding '316 is capable of being used in the intended manner because it meets all claimed structural features.

6. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hidding et al. US 5,957,316 in view of Li US 4,700,860 and in view of Adams et al. US 5,687,865as applied above under 35 U.S.C. 103(a) to claim 1, and further in view of Ma US 6,568,563.

Regarding claim 4, Hidding '316 fails to teach the cap being formed of LDPE. The reference is silent as to the material used to form the cap.

Ma '563 teaches forming a cap of LDPE in column 3, lines 54-57.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the cap of Hidding '316 of LDPE, as taught by Ma '563, motivated by the benefit of forming the cap of an inexpensive easily-molded food-grade material. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 5, the limitation comprises a method recitation within the scope of an apparatus claim. It has been held that method limitations in a product claim do not serve to patentably distinguish the claimed product from the prior art. See *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). Thus, even though a product-by-process claim is limited and defined by a process, determination of patentability is based on the product itself. Accordingly, if the product in a product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. *Thorpe*, 777 F.2d at 697, 227 USPQ at 966; *In re Marosi*, 710 F2.d 799, 218 USPQ 289 (Fed. Cir. 1983).

7. Claim 2-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hidding et al. US 5,957,316 in view of Li US 4,700,860 as applied above under 35 U.S.C. 103(a) to claim 1, and further in view of Blair US 3,985,255.

Hidding, as applied, fails to teach a pair of tear lines.

Blair '255 teaches a pair of diverging tear lines (17), for fracturing the closure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Hidding '316, providing the tear lines taught by Blair '255, motivated by the benefit of multiple fracturing to indicate tampering.

Regarding claim 10, the tear lines of Blair '255 read on the claim, because they diverge the entire time, and therefore when applied to Hidding '316, they would diverge not only below the bead, but above it as well.

Regarding claims 11-12, the diverging lines at one point are approximately twice, and further up approximately three times as thick, as the pull tab.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/
Supervisory Patent Examiner, Art Unit 3781

/James N Smalley/
Examiner, Art Unit 3781